

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2749 OF 2007

Mr. Jayendra Motiram Motghare] .. Petitioner

Versus

1. The State of Maharashtra & 3 ors.] .. Respondents

Mr. Girish Kulkarni and Mrs. S.S. Deshmukh with Ms. Swati V. Deshpande for the petitioner.

Mr. C.R. Sonawane, AGP, for the respondents No.1 to 3.

Mr. M.S. Karnik for the respondent No.4.

CORAM: S.B. MHASE &
D.G. KARNIK, JJ.

DATED: 03RD OCTOBER, 2007

P.C. :

1. Heard.

2. By this Petition, the petitioner challenges the judgment and order dated 20th December, 2006, passed by the Maharashtra Administrative Tribunal (for short "Tribunal") dismissing the three Original Applications filed by the applicant.

3. By filing three Original Applications, the petitioner inter alia challenged the decision of the

State Government to amalgamate the cadres and also fixation of his seniority in the amalgamated cadre. Previously, there were two departments one known as Industrial Safety & Health (regarding factories) and the other known as Chemical Safety working under the Director of Industrial Safety. Separate seniority list was maintained in two separate cadres. The head of the Industrial Safety & Health Department was of the rank of an Additional Director while the head of the Chemical safety was of the rank of a Joint Director. By the Government Resolution dated 20th April, 2004, the said two departments were amalgamated and principles relating to fixation of interse seniority were also laid down. The petitioner was initially appointed as Inspector of Factories Class-II (equivalent to Assistant Director) as a direct recruit on 5th March, 1982 and promoted as Deputy Director, Industrial Safety & Health in the year 1986. The respondent No.4, who is the private respondent, was appointed as a Deputy Director (equivalent to Inspector Class-I) on 11th April, 1980. Thus, the petitioner was promoted to the rank of Deputy Director in the department of Industrial Safety & Health in the year 1986 while the respondent No.4 was appointed in the same rank of Deputy Director in the Chemical safety department in the year 1980 i.e. six years earlier than the petitioner. Respondent No.4 was thus

senior to the petitioner, though in a different department holding the same rank. After amalgamation, the respondent No.4 has been shown as senior to the petitioner. Being aggrieved, the petitioner approached the Tribunal, which rejected the petitioner's claim.

4. Before us, the petitioner has two-fold grievances. Firstly, he submitted that on account of amalgamation, his chances of promotion have been reduced inasmuch as the respondent No.4 has been shown as senior to him. Secondly, he submitted that for the post of further promotion i.e. post of Additional Director, the requisite qualification is degree in Engineering; while the petitioner holds bachelors degree in Engineering (B.E.), the respondent No.4 holds a Masters Degree in Organic Chemistry and, therefore, not eligible for being considered for the post of Additional Director. In this Petition we are not concerned with the further avenues of promotion open to the petitioner and the respondent No.4 and the qualifications for the promotional post. It is not the case of the petitioner that the respondent No.4 is not qualified to hold the post he is presently holding. On amalgamation of the cadres the chances of further promotion might get adversely affected in respect of one and may become beneficial for another. But that cannot be a ground for faulting the

amalgamation of cadres. As regards individual seniority, we have already demonstrated that respondent No.4 was holding the post of Deputy Director at a point of time earlier than the petitioner. In the circumstances, we do not see any error in the seniority list.

5. As regards the contention that proper principles have not been taken into consideration while amalgamating the two cadres, it may be borne in mind that amalgamation of posts is a policy decision and the Court cannot go into the question of the correctness of that policy. In **S.P. Shivprasad Pipal Vs. Union of India** reported in (1998) 4 SCC 598, relied upon by the counsel for the petitioner, the Supreme Court has considered the principles about merger of two cadres. After enumerating the factors which are required to be taken into consideration while merging the cadres and equating the posts, the Supreme Court observed in paragraph 5 as follows:

"This Court further observed that it is not open to the court to consider whether the equation of posts made by the Central Government is right or wrong. This was a matter exclusively within the province of the Central Government. Perhaps the only question the court can enquire into is whether the four principles cited above had

been properly taken into account. This is the narrow and limited field within which the supervisory jurisdiction of the court can operate."

6. As decided by the Supreme Court, it is not open to the Court to consider whether equation of posts on amalgamation made by the Government is right or wrong. That is a matter of policy exclusively within the purview of the Government. The question which the Court can enquire into is whether the four principles have been taken into account. We do not find from the facts of the case that any of the four principles have not been taken into consideration, the burden of proving any breach of the principles is on the petitioner.

7. In the circumstances, there is no merit in the Writ Petition and it is, accordingly, rejected.

Sd/-
[D.G. KARNIK, J.]

Sd/-
[S.B. MHASE, J.]